

**AUG 19 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

RUSSELL NORMAN REED,

Petitioner,

v.

TERRY STEWART,

Respondent.

No. 00-17251

D.C. No. CV-00-00446-WDB

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
William D. Browning, District Judge, Presiding

Argued and Submitted July 10, 2003  
Pasadena, California

Before: SILVERMAN, W. FLETCHER, and RAWLINSON, Circuit Judges.

1. The district court retained jurisdiction to decide the merits of Reed's habeas petition because no Certificate of Appealability had issued. *See Christian v. Rhode*, 41 F.3d 461, 470 (9th Cir. 1994).

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

2. The Arizona Court of Appeals' decision holding that Reed's Sixth Amendment rights were not violated when the trial court proceeded in his absence was not contrary to, nor did it involve an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States. *See Diaz v. United States*, 223 U.S. 442, 456 (1912).

3. Nor was the Arizona Court of Appeals' decision holding that Reed's constitutional rights were not violated when the trial court refused to instruct the jury on the elements of duress contrary to, or an unreasonable application of, Supreme Court precedent. The trial court's determination as to this issue did not "so infect[] the entire trial that [Reed's] conviction violat[ed] due process." *Estelle v. McGuire*, 502 U.S. 62, 72 (1991) (citations omitted).

**AFFIRMED.**